Texas Aerotech *and* Communications Workers of America, AFL–CIO. Case 16–CA–16639

May 31, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND COHEN

Upon a charge filed by the Union on April 1, 1994, the General Counsel of the National Labor Relations Board issued a complaint on April 8, 1994, against Texas Aerotech, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing to bargain following the Union's certification in Case 16–RC–9578. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer. (Official notice is taken of the ''record'' in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).)

On May 2, 1994, the General Counsel filed a Motion to Transfer and Continue Case Before the Board and Motion for Summary Judgment. On May 4, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On May 18, 1994, the Union filed a statement in support of the General Counsel's Motion for Summary Judgment. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, ''all the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board.'' The Respondent did not file an answer.[1]

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.[2]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Texas corporation and a subsidiary of United Education and Software, Inc., with an office and place of business in Dallas, Texas, has operated a trade school engaged in training airline mechanics.

During the 12-month period ending April 8, 1994, the Respondent, in conducting its business operations, purchased and received goods and materials valued in excess of $50,000, that originated from points and places located outside the State of Texas and were shipped directly to its Dallas facility.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held April 23, 1993, the Union was certified on February 24, 1994, as the collective-bargaining representative of the employees in the following appropriate unit:

> INCLUDED: All employees of Texas Aerotech.
> EXCLUDED: Supervisors, and Admissions department employees.

Since February 24, 1994, and at all times material, the Union has been, and is, the exclusive collective-bargaining representative of employees in the above-described unit by virtue of Section 9(a) of the Act.

B. *Refusal to Bargain*

Since March 7, 1994, the Union, by letter, requested the Respondent to bargain with it as the exclusive collective-bargaining representative of the employees in the unit and to furnish information. Since March 18, 1994, the Respondent has refused. On about March 7, 1994, the Union requested the Respondent to provide it with information concerning employee wages and benefits and since about March 18, 1994, the Respondent has refused. The information sought by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees.

[1] Although the General Counsel did not send a reminder or warning of the consequences of failing to file an answer to the Respondent, we find that this does not warrant denying the General Counsel's Motion for Summary Judgment. See *M. Jacobs & Associates*, 312 NLRB No. 13, JD slip op. at fn. 1 (Sept. 10, 1993) (not reported in Board volumes); and *Superior Industries*, 289 NLRB 834, 835 fn. 13 (1988).

[2] We have, pursuant to the General Counsel's request, taken official notice of the record in Case 16–RC–9578. Although the Respondent has previously stated an intention to test the certification therein, its failure to file an answer to the instant complaint is a waiver of the right to challenge that certification.

By its overall acts and conduct, the Respondent has failed and refused, and is failing and refusing, to bargain in good faith with the Union as the lawful representative of the unit employees in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after March 18, 1994, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested relevant and necessary information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the relevant and necessary information on request.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Texas Aerotech, Dallas, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Communications Workers of America, AFL–CIO, as the exclusive collective-bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

> INCLUDED: All employees of Texas Aerotech.
> EXCLUDED: Supervisors, and Admissions department employees.

(b) On request, furnish the Union information that is relevant and necessary to its role as the exclusive collective-representative of the unit employees.

(c) Post at its facility in Dallas, Texas, copies of the attached notice marked ''Appendix.''[3] Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Communications Workers of America, AFL–CIO, as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive collective-bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

> INCLUDED: All employees of Texas Aerotech.
> EXCLUDED: Supervisors, and Admissions department employees.

WE WILL, on request, furnish the Union information that is relevant and necessary to its role as the exclusive collective-bargaining representative of the unit employees.

TEXAS AEROTECH